

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CA #: 03 CV 12463 RGS

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2004 JAN 12 P 3:11  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

GREAT NORTHERN INSURANCE CO.  
as subrogee of PHYLLIS MACNEIL,  
1000 Pillsbury Center  
Minneapolis, MN 55402  
Plaintiff

v.

INTERCITY ALARMS, INC.  
20 North Main Street  
Yarmouth, MA 02664  
Defendant/Third Party Plaintiff

v.

JOHN VOSE  
Third Party Defendant

**THIRD PARTY COMPLAINT**

1. The third party plaintiff is INTERCITY ALARMS, INC. a defendant in the action.
2. The third party defendant, JOHN VOSE is a person with a residence at 188 Gansett Rd., Falmouth, Barnstable County, Massachusetts, 02540.
3. According to the allegations in the complaint, (Attached herewith as exhibit "A") on or about January 21, 2003 the house owned by the plaintiff's subrogor was destroyed by fire as a result of the negligence of the defendant, third party plaintiff.
4. If the plaintiff and/or its subrogor was injured or damaged as alleged, then their alleged injuries and alleged damages were due in whole or in part as a result of the negligence and carelessness of the third party defendant, John Vose, in that he was the direct and

proximate cause of the fire which allegedly destroyed the house because he left a wooden cabinet on the stove in the kitchen and turned on the stove.

5. That in the event a finding enters in favor of the plaintiff against the defendant/third party plaintiff, Intercity Alarms, Inc., then the third party defendant, John Vose, is liable to the defendant/third party plaintiff in whole or in part for the amount of any finding or judgment for damages that might enter as against Intercity Alarms, Inc., in contribution as a joint tortfeasor pursuant to M.G.L. c. 231B.

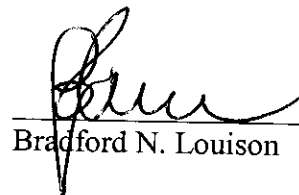
DEFENDANT/THIRD PARTY PLAINTIFF DEMANDS A TRIAL BY A JURY ON ALL ISSUES.

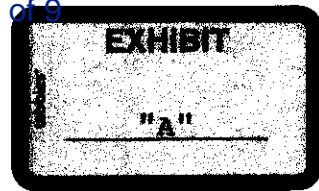
The Defendant/Third Party Plaintiff  
by its attorney,

  
Bradford N. Louison (BBO# 305755)  
MERRICK, LOUISON & COSTELLO, LLP  
67 Batterymarch Street  
Boston, MA 02110  
(617) 439-0305

**CERTIFICATE OF SERVICE**

I, Bradford N. Louison, hereby certify that on the 8th day of JAN 2004, I served the foregoing by causing a copy to be mailed, postage prepaid, directed to Roy P. Giarrusso, Giarrusso, Norton, Cooley & McGlone, P.C., Marina Bay, 308 Victory Rd., Quincy, MA 02171.

  
Bradford N. Louison



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
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2003 DEC -8 P 12:20

CIVIL ACTION NO. 03-12463  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

GREAT NORTHERN INSURANCE CO.  
as subrogee of PHYLLIS MACNEIL,  
1000 Pillsbury Center  
Minneapolis, MN 55402

Plaintiff,

vs.

INTERCITY ALARMS, INC.  
20 North Main Street  
Yarmouth, MA 02664

Defendant.

JURY TRIAL DEMANDED

03-12463 RGS

COMPLAINT

Plaintiff, Great Northern Insurance Company ("Great Northern"), as subrogee of Phyllis MacNeil, upon information and belief, hereby alleges the following:

PARTIES

1. Plaintiff, Great Northern, as subrogee of Phyllis MacNeil, is a corporation organized and existing under the laws of the State of Minnesota with a principal place of business located at 1000 Pillsbury Center, Minneapolis, Minnesota 55402. At all times material hereto, Great Northern was engaged in the business of issuing policies of insurance in the Commonwealth of Massachusetts.

2. At all times material hereto, plaintiff's insured, Phyllis MacNeil, was the owner of the real and personal property located at 148 Gansett Road, Woods Hole, Massachusetts 02543 (hereinafter "the premises").

3. Defendant, Intercity Alarms, Inc. ("Intercity"), is a Massachusetts corporation with its principal place of business located at 20 North Main Street, Yarmouth, Massachusetts, 02664, and at all times material hereto, was authorized to and did transact its business in this judicial district.

#### **JURISDICTION AND VENUE**

4. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1332, as plaintiff and defendant are citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

5. Venue is proper in this district pursuant to 28 U.S.C. §1391.

#### **FACTUAL ALLEGATIONS**

6. At all times material hereto, Phyllis MacNeil was the owner of the real and personal property located at 148 Gansett Road, Woods Hole, Massachusetts.

7. Prior to January 21, 2003, Phyllis MacNeil had hired, retained, and/or contracted with Intercity Alarms, Inc. for the design, purchase, installation, monitoring, maintenance, testing, and/or inspection of an alarm system at the premises.

8. On or about January 21, 2003 at approximately 5 p.m., John Vose, a handyman hired by Phyllis MacNeil, activated the alarm system and left the premises after performing work inside the premises.

9. On or about January 21, 2003 at approximately 12 midnight, a fire originated and occurred within the premises.

10. The subject alarm system failed to function and as a result, prompt notification of the fire was not received by the local fire department.

11. As a result of the failure of the alarm system to function properly, the aforementioned fire was allowed to escalate from its incipient stage into a major conflagration that substantially damaged and destroyed the real and personal property of Phyllis MacNeil.

12. As a result of the defective design, installation, maintenance, and/or testing of the alarm system, the alarm system's inability to detect the fire in its incipient stages and to alert the local fire department caused an escalation in the damages to Plaintiff's insured, as early detection and response would have extinguished the fire in its early stages.

13. In accordance with the policy of insurance, plaintiff has paid or will in the future pay to its insured, Phyllis MacNeil, an amount in excess of \$2,000,000 for the damages caused by the fire, and is thereby subrogated to its insured right of recovery against defendant, to the extent of its payments.

### COUNT I

#### **(Negligence)**

14. Plaintiff hereby incorporates by reference each and every allegation set forth above as fully as if the same were recited herein at length.

15. The aforesaid fire and resulting damages suffered by Plaintiff's insured, Phyllis MacNeil, were proximately caused by the negligence, carelessness, gross negligence, willful and wanton misconduct, and/or otherwise culpable conduct of the defendant, its agents, servants, and/or employees, and workers, including, but not limited to the following:

- a. Failing to properly design the alarm system;
- b. Failing to properly install, maintain, inspect, test, and/or monitor the aforesaid alarm system at the premises;
- c. Designing and installing the alarm system so that its smoke detectors failed to send an alarm signal to the central monitoring location;
- d. Failing to comply with all applicable codes, statutes, and ordinances concerning the installation, servicing, maintenance, testing, and/or monitoring of the alarm system;
- e. Failing to comply with applicable NFPA standards concerning the programming, installation, maintenance, servicing, and/or monitoring of alarm systems;
- f. Failing to comply with all applicable NFPA, UL, local and state standards, and industry practices with regard to the monitoring of alarm systems;
- g. Failing to exercise reasonable care and diligence in designing, installing, servicing, testing, maintaining, and/or monitoring of the alarm system;
- h. Failing to properly train and/or supervise its employees in the proper design, application, programming, installation, service, testing, maintenance, and monitoring of this alarm system;
- i. Acting in a wanton, willful, and reckless manner evidencing a reckless disregard to the rights of plaintiff's insured;
- j. Engaging in conduct and making misrepresentations that led plaintiff's insured into a false sense of security;
- k. Making representations to plaintiff's insured as to the particular standards, quality, and reliability of the alarm system;
- l. Otherwise acting negligently as will be disclosed during the discovery process.

## COUNT II

### **(Breach of Contract)**

16. Plaintiff hereby incorporates by reference each and every allegation set forth above as fully as if the same were recited herein at length.

17. Prior to January 21, 2001, Phyllis MacNeil had contracted with defendant to provide an alarm system to detect fires at their incipient stage and alert the fire department in case of a fire on the premises.

18. By express and/or implied agreements, defendant warranted, promised, and/or guaranteed that its alarm system would provide notification of a incipient fire condition.

19. Defendant, by its aforesaid conduct, breached and violated the terms and conditions of its express or implied contract, guarantees, and warranties.

20. The breach by the defendant of its contract, guarantees, and warranties caused the damage to the real and personal property of Phyllis MacNeil.

### **COUNT III**

#### **(Breach of Warranty)**

21. Plaintiff hereby incorporates by reference each and every allegation set forth above as fully as if the same were recited herein at length.

22. In entering into an agreement with plaintiff's insured to design, install and/or monitor the alarm system, defendant expressly and/or impliedly warranted that it would perform its duties in a professional and workmanlike manner and in accordance with applicable industry standards.

23. By failing to perform its duties as described above, defendant breached its express and implied warranties.

24. As a direct and proximate result of the aforesaid breaches of warranties, the fire at the premises occurred, and Phyllis MacNeil sustained substantial damage to her real and personal property.

**WHEREFORE**, plaintiff, Great Northern, as subrogee of Phyllis MacNeil, demands judgment in its favor against defendant Intercity Alarms, Inc. for compensatory damages, in an amount in excess of \$2,000,000, along with prejudgment interest, costs of this action, and such other and further relief as the Court may deem appropriate under the circumstances.

**JURY DEMAND**

THE PLAINTIFFS CLAIM A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,  
GREAT NORTHERN INSURANCE  
COMPANY  
As subrogee of PHYLLIS MACNEIL,  
By its attorneys,



Roy P. Giarrusso BBO No. 549470  
Christine Kelley Tramontana BBO No. 644849  
GIARRUSSO, NORTON, COOLEY  
& MCGLONE, P.C.  
Marina Bay  
308 Victory Road  
Quincy, MA 02171  
(617) 770-2900

Of Counsel:  
A. Richard Bailey, Esquire  
John R. Slattery, Esquire  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19107

DATE: December 5, 2003

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JS 44 (Rev. 3/99)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

GREAT NORTHERN INSURANCE CO., as  
subrogee of PHYLLIS MACNEIL

(b) County of Residence of First Listed Plaintiff Minnesota  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

INTERCITY ALARMS, INC.

County of Residence of First Listed Barnstable, MA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

## (c) Attorney's (Firm Name, Address, and Telephone Number)

Roy P. Giarrusso, Christine Kelley Tramontana  
Giarrusso, Norton, Cooley & McGlone, P.C.  
Marina Bay, 308 Victory Road, Quincy, MA 02171  
(617) 770-2900

## Attorneys (If Known)

Bradford Louison  
Merrick, Louison & Costello  
67 Batterymarch St.  
Boston, MA 02110

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☒ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☒ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Recovery of Overpayment of Student Loans (Excl. Veterans) <input type="checkbox"/> 170 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 180 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input checked="" type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. §1332 - diversity jurisdiction

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/5/03

SIGNATURE OF ATTORNEY OF RECORD

CK Tramontana

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_